

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, et al.,
Plaintiffs,

v.

STATE OF WASHINGTON, et al.,
Defendants.

No. C70-9213
Subproceeding: 01-1

**ORDER GRANTING THE PARTIES'
JOINT MOTION FOR REFERRAL TO
MEDIATION**

The parties jointly moved this Court to refer the parties to mediation concerning the 2013 Permanent Injunction Regarding Culvert Correction (Doc. 753). Dkt. #823.¹ The Court, having retained continuing jurisdiction over this subproceeding, and having considered the joint motion and all necessary related documents, hereby ORDERS that the joint motion is GRANTED.

The Court further ORDERS that:

1. The mediation shall take place in accordance with Local Civil Rule 39.1(a)(6), the Uniform Mediation Act, Chapter 7.07 RCW, and Rule 408 of the Federal Rules of Evidence. All

¹ The joint motion was filed by the Hoh Tribe, Jamestown S'Klallam Tribe, Lower Elwha Klallam Tribe, Lummi Nation, Makah Indian Tribe, Muckleshoot Indian Tribe, Nisqually Indian Tribe, Nooksack Indian Tribe, Port Gamble S'Klallam Tribe, Puyallup Tribe of Indians, Quileute Tribes, Quinault Indian Nation, Squaxin Island Tribe, Suquamish Tribe, Swinomish Indian Tribal Community, Stillaguamish Tribe of Indians, Skokomish Indian Tribe, Sauk-Suiattle Indian Tribe, Tulalip Tribes, Upper Skagit Indian Tribe, Yakama Nation, and the State of Washington.

ORDER GRANTING THE PARTIES' JOINT MOTION
FOR REFERRAL TO MEDIATION- 1

No. C70-9213, Subproceeding 01-1 (Culverts)

1 communications related to or in furtherance of the mediation are to remain confidential and
2 protected from disclosure, including all communications in any form between or among: the
3 mediator(s) and any party or combination of parties; or any combination of parties. In the
4 preceding sentence, the term “parties” includes any and all agents of a party participating in the
5 mediation. All documents prepared for or in furtherance of the mediation shall also remain
6 confidential and protected from disclosure, including memoranda, notes, presentations, and
7 internal communications in any form.

8 2. Except as otherwise provided in this order, the Parties shall not disclose to any
9 person not a Party participating in the mediation any information from the mediation process
10 revealing substantive matters, including the Parties’ positions, negotiations, proposals, or
11 settlement offers made in the negotiation process.

12 3. The Parties, however, reserve the right to utilize or disclose any information from
13 the mediation process to fully inform decision-makers within their government and to make
14 recommendations to such decision-makers or affected agencies concerning settlement. To the
15 extent a Party conveys information from the mediation process to its decision-makers, the
16 decision-makers’ agreement to be bound by the mediation confidentiality requirements must be
17 secured in advance so that the decision-makers are not free to disclose confidential information.

18 4. The Parties also reserve the right to use or disclose any information from the
19 mediation process to fully inform United States congressional representatives and State legislators,
20 or their staff, provided that no Party shall provide any written information from the mediation
21 process, whether in paper or electronic form, received from any other party in the mediation
22 process, to such representatives, legislators, or their staff without the consent of the other Parties.
23 If a Party uses or discloses information from the mediation process in a communication with a
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1 representative or a legislator, the Parties agree that that Party will promptly notify the other Parties
2 to this agreement that such communication has occurred. The Party will be under no obligation to
3 disclose the content of such communication to the other Parties.

4 5. The Parties also reserve the right to provide public notice of any agreement
5 achieved by, after, or as a result of the negotiation process as may be required by law or
6 established government policy, and to publish a press release concerning any final settlement
7 achieved by or after the mediation process. The Parties agree to use their best efforts to develop
8 a joint statement or press release on any settlement reached in the mediation.

9 6. No Party may subpoena any information from the mediation process prepared by
10 or for the mediator, or compel or require the mediator to testify as a witness regarding the
11 negotiation process.

12 7. It is recognized that a third party may request the production of information from
13 the negotiation process from the state or federal governmental parties under the Washington
14 Public Records Act, Chap. 42.56 RCW ("PRA"), or the Freedom of Information Act, 5 U.S.C.
15 §552(b) ("FOIA"). The governmental party receiving such requests will immediately notify and
16 consult with the other parties to this Order. The intent of the notice is for the Parties to try to
17 agree upon a response to the request, to seek a further protective order from this Court, a state
18 court, or both, before any disclosure.

19 8. To the extent permitted by State, Tribal, and Federal law, respectively, the
20 confidentiality provisions of this stipulation shall remain in full force and effect without regard
21 to whether any legal actions or issues arising out of the case are settled or concluded by final
22 judgment or otherwise, and shall survive termination of the negotiation process.

23 9. No party shall be bound by anything said or done during mediation sessions or
24 in communications related to the mediation unless an agreement is reached. Any agreement
25 reached shall be reduced to writing and shall be binding upon all parties to that agreement.

10. Participation in the mediation is voluntary and any party that wishes to withdraw

ORDER GRANTING THE PARTIES' JOINT MOTION
FOR REFERRAL TO MEDIATION- 3

1 from the mediation may do so at any time.

2 11. The mediator(s) shall be selected by the parties jointly by agreement. If the
3 parties would like the Court to appoint a District Judge or Magistrate Judge to serve as mediator,
4 they may file a motion with that request.

5 DATED this 3rd day of March, 2025.

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8 RICARDO S. MARTINEZ
9 UNITED STATES DISTRICT JUDGE
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25 ORDER GRANTING THE PARTIES' JOINT MOTION
FOR REFERRAL TO MEDIATION- 4